

HONORABLE RICARDO S. MARTINEZ

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LAVERA SKIN CARE NORTH AMERICA,
INC., a Washington corporation; VICTOR
TANG, an individual,

Plaintiffs,

v.

LAVERANA GMBH & CO. KG, a German
limited partnership,

Defendant.

No. 2:13-cv-02311-RSM

**DECLARATION OF ULRIKE JACOB IN
SUPPORT OF PLAINTIFF'S
OPPOSITION TO MOTION TO DISMISS**

1. I am the owner of Lavera Skin Care North America, Inc. I am over eighteen years of age, am competent to testify and submit this declaration based upon personal knowledge.

2. I first met Thomas Haase, the owner of Laverana GmbH & Co., in 1998. Laverana manufactures natural and organic cosmetics and skin care products. At that time, it only sold its products in Germany and German speaking countries. I believed there was a market in the United States and Canada. I had a degree in chemistry and was a long-time Lavera user. I knew that I could be the perfect spokesperson for the Lavera line promoting and educating customers in North America about good ingredients and natural cosmetics. In 1998, I suggested to Mr. Haase that my company, Ars Vivendi, become the exclusive importer and representative for Laverana in the U.S. and Canada.

DECLARATION OF ULRIKE JACOB – 1

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1 3. My husband at that time was Andreas Dewor. Andreas was also an owner of Ars
2 Vivendi. We had discussions with Mr. Haase and Mr. Werner Oelschlaeger, the Sales Manager
3 about becoming Laverana's representative. In 1999, we executed a distribution agreement. The
4 territory for the agreement was California, Oregon, Washington, New York, and British
5 Columbia. **Exhibit A.** Mr. Haase did not want to make a contract with a foreign company. So
6 we agreed that Andreas would be the party to the contract instead of Ars Vivendi.

7 4. Ars Vivendi was first a British Columbia corporation and then a California
8 corporation. Its only employees in 1999 were me and Andreas. We split up the work. Andreas
9 handled administration, logistics and imports, including ordering from Laverana. I was the face
10 of the business in the U.S. and Canada, creating client relationships with retail stores.

11 5. At first, Laverana shipped goods to Vancouver, British Columbia where we did
12 test marketing for the line. Laverana had trouble packaging its goods properly for overseas
13 shipment, and for a period of time Andreas' brother Stefan Dewor took delivery of goods from
14 Laverana in Germany. Once Laverana improved its packaging process, it resumed shipping
15 direct to the US. In 2001 or 2002, it started shipping to Ars Vivendi's location in San Diego,
16 California and also to several tradeshow direct. In 2006, it started shipping to Kirkland,
17 Washington, after Lavera Skin Care was formed. Laverana shipped goods on average two times
18 per month direct to Washington via Airfreight and Oceanfreight.

19 6. Not all products were delivered by Laverana "ex works." In 2009 and 2010,
20 Laverana made shipments using a "documents against payment" method, which meant that the
21 goods were not released until they reached the Canadian or U.S. border. Sample correspondence
22 and delivery notes using this method are attached as **Exhibit B.** Also, even as to the "ex works"
23 delivered goods, Laverana packaged its goods and placed them into boxes and containers and
24 had them shipped to us in the U.S. and Canada. About half the time, Laverana would
25 communicate with the shipping companies and arrange for shipments to us and half the time we
made the contact. Due to the time difference between Germany and the US, pick up of goods at

1 their facility was usually initiated by Laverana and then shipping documents were sent to us via
2 Fax or email. We use Fedex, UPS, Expeditors and CH Robinson Freight for shipments to the US
3 and they have offices and representatives in Germany. Additional shipping documents are
4 attached as **Exhibit C**.

5 7. Andreas and I divorced in 2004. Lavera Skin Care ("LSC") was formed as a
6 Washington corporation in 2006, and I have been a resident of Washington since 2006. Today, I
7 am the sole owner of LSC.

8 8. Selling Laverana goods in the U.S. and Canada was the only business of LSC.
9 Between 1999 and 2012, we invested approximately \$4 million for marketing and advertising of
10 Laverana products. In 2008, we entered the national market, and by 2010 we had Laverana
11 displays in national chains, 3,000-4,000 stores in all, and online at Drugstore.com. In 2010, LSC
12 had nearly \$5 million in sales. Also in 2010, we opened a new, 9,000-square-foot facility in
13 Kirkland, Washington. LSC was employing 20 people at that time – sales representatives,
14 marketing manager, makeup artists, graphics designer, web marketer, accountant, warehouse
15 staff, and customer service staff. Business had grown rapidly, natural and organic products were
16 becoming more mainstream, and we were expecting continued growth in the next few years of
17 25-30% annually.

18 9. In November 2009, I had a conversation with our export manager at Laverana,
19 Maia Francke. Ms. Francke had always been very helpful, and we had a good working
20 relationship. Ms. Francke told me that Laverana had hired a consultant who recommended that
21 Laverana open a direct international affiliate in the United States, instead of continuing to
22 distribute products through LSC. Ms. Francke said that she was uncomfortable with the situation
23 and that she did not know about her future at the company. Soon after, in January 2010, Ms.
24 Francke left Laverana.

25 10. In early 2010, we started having many problems with Laverana. The problems
started with the Trend line of cosmetics, which was our most successful and widely distributed

1 product (about 50 % of our sales). Laverana told us that they were re-launching the Trend line,
2 however the re-launch never happened. I discussed this matter many times with Laverana in
3 2010 and 2011, including making trips to Germany to meet with Mr. Haase or Sonia Czech or
4 Klara Ahlers, and each time I was told that a re-launch was coming soon. In the meantime,
5 Laverana stopped producing the existing line of Trend products. As a result, we could no longer
6 obtain enough products to keep our displays stocked in Target and other stores. Color cosmetics
7 products are commonly sold in displays and incomplete displays on the shelf are not accepted by
8 the retailers for any period of time. Laverana's failure to provide products caused LSC to lose
9 almost all the color cosmetics business we had worked to establish for years and damaged my
10 reputation as a business owner long-term.

11 11. It was not only the Trend line of products that was a problem. Soon, almost all of
12 our orders to Laverana started to be delayed or only partially filled, or not filled at all. We never
13 knew when products would be shipped, or how much of what we ordered would be in the
14 shipments when they arrived. By the summer of 2010, we were only receiving about 40% of the
15 products we ordered. After Ms. Francke left, Laverana also stopped communicating with us in a
16 productive way. Many emails and phone calls were ignored. Laverana even stopped showing us
17 its inventory so that we had no idea what products were available to order.

18 12. During the same time period of 2010 and 2011, we began receiving many
19 products from Laverana that were defective. Many airless pump bottles for skin care items had
20 pumps that were broken. When we spoke to Laverana about this they told us to bang them on
21 the table to make them work. Also, we received powders and eye shadows that were broken,
22 lipsticks that had broken lids, and makeup products containing rice germ that had turned rancid.
23 These products were not fit for sale and we tried to get credit for the items, but had to argue with
24 Laverana endlessly to get a credit for defective items. They still owe us credits for defective
25 items in an amount of more than \$50,000 today.

1 13. Laverana also began making unreasonable demands. In winter 2010, Laverana
2 told us that LSC would have to start pre-paying for all of our orders. Until that time, we had
3 ordered using a line of credit facility with Keybank or Sterling Bank, and this process had
4 generally worked well for both parties. We received the goods and then advanced money to pay
5 for them within 45 to 60 days after receipt of goods in our US warehouse.
6 Being forced to pre-pay was a hardship for LSC as we did not have the availability in our line of
7 credit without the actual goods as collateral for the bank. I asked other export partners of
8 Laverana, and Maia Francke, who else had to pre-pay after being a good customer for more than
9 10 years, and I was told LSC was the only one.

10 14. In 2011, Laverana also changed the language on its packaging. Up until that time,
11 Laverana had packaged goods for sale in Canada in dual-language packaging, English and
12 French. This is a requirement for all products sold in Canada. All of a sudden, Laverana refused
13 to do this anymore. They told us we should put dual-language stickers on the products, however
14 the stickers did not look good. Our Canadian sub-distributor Flora refused to accept the stickers.
15 We then had boxes with French and English custom-made for Laverana's products at our
16 expense, however Laverana refused to allow us to repackage the goods into these boxes. Prior
17 to 2010, we had not had problems working with Laverana about packaging. For example, in
18 2008, Laverana changed its packaging after we told them that using the phrase skin "repair"
19 would violate FDA regulations.

20 15. In 2010, Laverana also started causing problems with regulatory compliance.
21 Laverana had appointed LSC as its authorized representative in the U.S. and Canada for
22 obtaining product certifications from the Food and Drug Administration (FDA) and Health
23 Canada. In 2010, the FDA implemented new regulations that required the manufacturer of
24 certain sun screen products to be audited. Laverana refused to allow us to certify compliance
25 with this regulation. Laverana terminated the sun screen product line for the North American
market, which was 15% of LSC's sales.

1 16. Laverana also refused to comply with new Health Canada regulations in 2012 that
2 required manufacturers of certain products to register with the Canadian government and be able
3 to import the goods into Canada.

4 17. When we started having problems getting enough product from Laverana, I asked
5 Laverana if LSC could sell products from other manufacturers. I asked three times in 2010,
6 verbally and in writing. Laverana refused.

7 18. I did everything in my power to help save my business and my customers that I
8 had built from the ground up over 12 years. I flew to Germany three times and sent notices to
9 Laverana that the situation was unbearable. I was ignored. I had to watch over 3 years as all I had
10 built fell apart.

11 19. All of these problems with Laverana caused our business to suffer greatly. By the
12 end of 2011, LSC had lost almost every major customer, including Target, Wegmans, CVS,
13 Whole Foods, London Drugs, our Canadian sub-distributor Flora, and Drugstore.com. In 2010,
14 we had almost \$5 million in sales. In 2012, we had only \$500,000. In 2010, we had 20
15 employees. By early 2012, we had let everyone go, and were down to only two employees. Our
16 CPA firm, Raymond Clarke and Co., produced an independent accounts' report finding that just
17 in 2010 and 2011 LSC suffered gross profit losses of nearly \$5 million dollars. **Exhibit D.**
18 Losses have continued since then.

19 20. In 2012, we mutually agreed to mediate our claims against Laverana. In July, we
20 met in Germany for three days of mediation. At the end of the session, the mediator suggested
21 that the mediation continue by phone conference and email as we both seem to want to work
22 towards a mutually beneficial solution. We returned to Washington, and between July and
23 December, 2012, we had about 15-20 phone mediation conferences with the mediator and
24 Laverana.

25 21. By December 2012, we had reached an agreement in principle for settlement of
our claims. Instead of finalizing the agreement, however, Mr. Haase cancelled and re-scheduled

1 several phone conferences in December and January. Then, without warning, Laverana filed for
2 trademark protection in the U.S. of the mark lavera on January 14, 2013. My husband, Victor
3 Tang purchased lavera.com in 2005, and LSC has used it continuously since 2006 to market and
4 sell Laverana products. *See* Declaration of Victor Tang.

5 22. By trying to take control of our internet site, Laverana made it very clear that they
6 did not want to settle our claims, and continue to be our partner. Mediation discussions broke
7 down. Then, on March 27, 2013, Laverana sent us a letter stating that they were terminating the
8 2008 Distribution Agreement because LSC had not met revenue goals. **Exhibit E.** (The 2008
9 Distribution Agreement replaced the 1999 agreement between Laverana and Andreas Dewor.
10 The 2008 Distribution Agreement is between Laverana and LSC. **Exhibit F.**)

11 23. I have read the declaration of Thomas Haase. It is wrong or incomplete in many
12 instances. First, Mr. Haase states in “Background Regarding Laverana” that Laverana has had
13 no involvement in business within the United States or Washington. *See* Haase Dec., ¶¶ 2-11.
14 The entire purpose of the 2008 Agreement between Laverana and LSC (and of the contractual
15 relationship between Laverana and Ars Vivendi going back to 1999) was to make LSC the
16 representative for Laverana in the U.S. market. When I approached Mr. Haase in 1998,
17 Laverana did not have the financial means or know how to start a business in the U.S., and they
18 asked us to invest Deutsch Marks 100,000 (about \$150,000), to develop the market back in 2000
19 – which we did. Laverana also made LSC its agent for purposes of obtaining FDA registrations
20 of Laverana products in the U.S. **Exhibit G.** And, until August 2013, Laverana’s website listed
21 LSC as its export partner in the U.S. and Canada and provided a link to our webpage. **Exhibit H**
22 contains historical snapshots of Laverana’s webpage.

23 24. Mr. Haase also states a very incomplete picture of visits by Laverana to meet with
24 LSC in the U.S. and Canada. At least once per year from 2000 to 2012, Laverana executives or
25 managers came to trade shows in the U.S. and Canada to meet with us. On these visits, we

1 would take Laverana to see displays of products we had placed in retail stores and meet with our
 2 clients at major tradeshow. I remember specifically the following trips:

- 3 • Thomas Haase, Owner Laverana: Anaheim Natural Products Expo West 2002
 4 with his son Phillip;
- 5 • Werner Oelschlaeger, Sales Manager Laverana: Baltimore Expo East 1999, Las
 6 Vegas Spa Show June 2000;
- 7 • Maia Francke, Export Manager Laverana: Anaheim Natural Products Expo West
 8 2006, 2007, 2008 and London Drugs House event 2008, Seattle, WA and
 9 Vancouver, BC;
- 10 • Sonia Clarke-Czech, Export Manager, later International Export Director
 11 Laverana: 2005 Natural Products Expo West Anaheim, 2009 San Francisco and
 12 2010 Natural Products Expo West
- 13 • Petra Scholl, Marketing Director Laverana: 2009 San Francisco
- 14 • Nadia Izmail, Export Manager Laverana: Natural Products Expo West 2010,
 15 Boston Natural Products Expo 2010 and Toronto Canadian Health Food
 16 Association (CHFA) East 2010.

17 During Ms. Francke's visit to Washington in 2008, she toured our facilities in Kirkland.

18 25. Mr. Haase states that the 2008 Distribution Agreement was "negotiated, drafted,
 19 and executed in Germany." *See* Haase Dec., ¶ 18. This is not correct. In 2008, Laverana
 20 presented us with a new proposed contract via email, which they explained is the new standard
 21 contract with all export partners in order to unify their export businesses. We received the
 22 contract in our office in Kirkland. We replied with proposed changes by email, but Laverana
 23 refused to accept the majority of changes we proposed. We used the yearly export meeting in
 24 Germany as a convenient place to sign the contract.

25 26. Mr. Haase states that LSC took delivery of Laverana products in Germany. *See*
 Haase Dec., ¶ 20. That is not true, except for a period of time between 1999 and 2003 when

1 Laverana was having trouble packaging its goods for overseas delivery. At all other times,
2 Laverana packaged its goods in boxes and on pallets for delivery to the U.S. and Canada, and
3 both Laverana and LSC arranged for shipment. Also, as our order volumes had grown
4 significantly in 2009 and 2010, shipments were done using a documents against cash method so
5 that ownership and possession of the goods was taken when the goods reached the U.S. or
6 Canada, and the bank was able to lend us money against the goods and we paid Laverana upon
7 the arrival of goods at the border. *See* Exhibit B.

8 27. Mr. Haase states that Laverana had no involvement in LSC's business activities,
9 and "no control over where and when LSC would decide to sell the products." *See* Haase Dec., ¶
10 20. That also is not true. Under the terms of the 2008 Agreement, we had to present detailed
11 marketing plans and market reports in a specific manner and format including client data,
12 initiatives on the market, channels we distribute to, etc. Laverana approved all marketing
13 materials and we had to follow corporate marketing standards that were set by Laverana. We
14 were not allowed to sell to other countries. We wanted to sell to other countries like Mexico and
15 Brazil and Laverana refused. Laverana knew very well what, where, how and how much we sold
16 on the market place.

17 28. Mr. Haase also discusses mediation between Laverana and LSC in 2013. *See*
18 Haase Dec., ¶¶ 24-27. This discussion is very incomplete. The mediation was one of many
19 times where we attempted to resolve a problem with Laverana. Many meetings and negotiations
20 over the years happened in the U.S. in person while Laverana was visiting us here on the market
21 or via email. The mediation involved eight months of negotiations of which only three days
22 were held in Germany in June 2012 and a 60-minute meeting in February 2013. The majority of
23 the time it was conducted while I was in Washington over phone and email.

24 29. Mr. Haase also states that all evidence related to this case is in Germany. *See*
25 Haase Dec., ¶¶ 30-34. This is false. All of LSC's losses took place in Washington State, and all
the documentation of our damages is here, including emails and complaints from clients and

1 communications with Laverana and other export partners about quality defects, delivery issues
 2 and ruthless business behavior by Laverana. These documents are mostly in English. In fact,
 3 most of the business correspondence over the years between Laverana and LSC and Ars Vivendi
 4 is in English, which is the standard language Laverana uses to communicate with all of its export
 5 partners. Samples of such correspondence are attached as **Exhibit I**. Also, the majority of the
 6 witnesses and the most important witnesses are here in Washington, including:

- 7 • Ulrike Jacob, Owner, LSC
- 8 • Carrie Rice, Accountant and now President, LSC
- 9 • Victor Tang, former E-commerce Manager LSC
- 10 • Vanessa Martin, Raymond Clarke and Company, Redmond, WA
- 11 • Christine Liu, KeyBank, Seattle, WA
- 12 • Michael Andrews, UPS Supply chain solutions Logistics, Auburn, WA
- 13 • Karissa Clevenger, former Sales Representative LSC
- 14 • Kim Davis, former Sales Representative LSC
- 15 • Scott Pfeiffer, former Controller, LSC
- 16 • David Ray, former Warehouse Manager LSC

17 Carrie Rice had many communication with Laverana in 2010 and 2011, and has knowledge of all
 18 of Laverana's breaches of the 2008 Agreement, including: refusing to fill orders; delaying
 19 deliveries; sending defective products; refusing to support registration with the FDA and Health
 20 Canada; and changing packaging. Victor Tang is the owner of "lavera.com," and has knowledge
 21 of LSC's lawful use of "lavera.com." Vanessa Martin has been LSC's CPA since 2006, and
 22 prepared the loss report attached as Exhibit D. Christine Liu has been LSC's banker since 2007,
 23 and also has knowledge of our business and the problems. Michael Andrews has knowledge of
 24 Laverana's many delivery delays and unreliable behavior. He helped us to establish a small
 25 credit facility with UPS when Laverana only would agree to ship goods to us under terms of pre-
 payment. Karissa Clevenger and Kim Davis are former sales representatives who had many

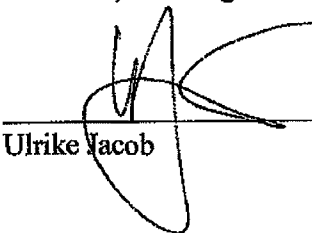
1 communications with upset clients since the problems with Laverana started. Representatives of
 2 those clients are also located in Washington and the United States, not Germany. Scott Pfeiffer
 3 was LSC's Controller in 2010, and attempted many communications with Laverana about its
 4 breaches of the contract.

5 30. The only witnesses not in Washington we think are important to our case are
 6 Elizabeth Liu of Flora, who was our Canadian sub-distributor and Laverana's former export
 7 manager, Maia Francke. I have spoken with both Ms. Liu and Ms. Francke, and they are both
 8 willing to provide testimony in Washington or by videotape for this lawsuit.

9 31. Lastly, Mr. Haase writes that Karen Rinne was LSC's "primary day-to-day
 10 contact" from 2011 until March, 2012. *See Haase Dec., ¶ 34.* This is not true. Our primary
 11 contacts in 2010, 2011, and 2012 were changing constantly and Laverana management assigned
 12 a new Junior person to us every few months after Maia Francke had left. These Junior
 13 Administrative people had no assigned decision making power and were not able to provide
 14 solutions and each time ended up quitting after a brief term. Prior, we had Senior Account
 15 Managers assigned and good working relationships for years.

16 I declare under penalty of perjury under the laws of the United States and Washington
 17 that foregoing is true and correct.

18 Dated this 2nd day of May, 2014, in Kirkland, Washington.

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 20 
 21 Ulrike Jacob
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DECLARATION OF ULRIKE JACOB – 11

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CERTIFICATE OF SERVICE

I certify that on May 5, 2014, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record for the parties.

s/Leslie Nims
Leslie Nims

DECLARATION OF ULRIKE JACOB – 12

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